

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL GOINES,

Plaintiff,

-against-

THE CITY OF NEW YORK, COMMISSIONER
RAYMOND KELLY, P.O.SUPERVISOR JOHN DOE #1;
P.O. GREGORY CLARKE, and DENNIS RUSSO, the
individual defendants sued individually and in their official
capacities,

Defendants.

**ANSWER TO CO-
DEFENDANT RUSSO'S
CROSS-CLAIMS**

Jury Trial Demanded

07-CV-05448 (CM)(KNF)

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Defendants City of New York, Raymond Kelly and Gregory Clarke, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the Cross-Claims of co-defendant Dennis Russo, respectfully allege, upon information and belief, as follows:

1. The City of New York, Raymond Kelly and Gregory Clarke repeat and reallege each and every paragraph of their answer to the complaint, dated September 5, 2007, as if fully set forth herein, including all affirmative defenses set forth therein.

2. Deny the allegations set forth in paragraph "82" of the cross-claim.

3. Deny the allegations set forth in paragraph "83" of the cross-claim and state that Officer Conroy is not a party to this matter.

4. Deny the allegations set forth in paragraph "84" of the cross-claim.

5. Deny the allegations set forth in paragraph "85" of the cross-claim.

6. Deny the allegations set forth in paragraph "86" of the cross-claim.

7. Deny the allegations set forth in paragraph "87" of the cross-claim.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

8. The cross-claims fail to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

9. The cross-claims may be barred by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

10. Co-defendant's cross claims against defendant City of New York are not ripe for adjudication.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

11. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any Act of Congress providing for the protection of civil rights.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

12. Any injury alleged to have been sustained resulted from plaintiff's and/or co-defendant's own culpable or negligent conduct and was not the proximate result of any act of the City defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

13. Punitive damages are not available against the defendant City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

14. Co-defendant Dennis Russo was not acting in furtherance of his employment and/or in accordance with New York Gen. Mun. Law § 50-K et. seq.

WHEREFORE, defendants City of New York, Raymond Kelly and Gregory Clarke request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 13, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room 3-142
New York, New York 10007
(212) 676-1347

By: _____
Brooke Birnbaum (BB 8338)
Assistant Corporation Counsel

TO: Mr. Michael Hueston, Esq. (via ECF)
Mr. John Burns, Esq. (via ECF)

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MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007*

*Of Counsel: Brooke Birnbaum
Tel: (212) 676-1347
NYCLIS No.*

Due and timely service is hereby admitted.

New York, N.Y. , 200..

..... Esq.

Attorney for